

## Federal Acquisition Regulation

## 19.1202-3

Small Disadvantaged Business Concerns, in solicitations and contracts when the circumstances in 19.1101 and 19.1102 apply. If a price evaluation adjustment is authorized on a regional basis, the clause shall be included in the solicitation even if the place of performance is outside an authorized region. The contracting officer shall insert the authorized price evaluation adjustment factor. The clause shall be used with its *Alternate I* when the contracting officer determines that there are no small disadvantaged business manufacturers that can meet the requirements of the solicitation. The clause shall be used with its *Alternate II* when a price evaluation adjustment is authorized on a regional basis.

[63 FR 52427, Sept. 30, 1998, as amended at 64 FR 36223, July 2, 1999]

### Subpart 19.12—Small Disadvantaged Business Participation Program

SOURCE: 63 FR 36123, July 1, 1998, unless otherwise noted.

#### 19.1201 General.

This subpart addresses the evaluation of the extent of participation of small disadvantaged business (SDB) concerns in performance of contracts in the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce (see 19.201(b)), and to the extent authorized by law. Two mechanisms are addressed in this subpart—

(a) An evaluation factor or subfactor for the participation of SDB concerns in performance of the contract; and

(b) An incentive subcontracting program for SDB concerns.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

#### 19.1202 Evaluation factor or subfactor.

##### 19.1202-1 General.

The extent of participation of SDB concerns in performance of the contract, in the NAICS Industry Subsector as determined by the Department of Commerce, and to the extent authorized by law, shall be evaluated con-

sistent with this section. Participation in performance of the contract includes joint ventures, teaming arrangements, and subcontracts. Credit under the evaluation factor or subfactor is not available to SDB concerns that receive a price evaluation adjustment under Subpart 19.11. If an SDB concern waives the price evaluation adjustment at Subpart 19.11, participation in performance of that contract includes the work expected to be performed by the SDB concern at the prime contract level.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

##### 19.1202-2 Applicability.

(a) Except as provided in paragraph (b) of this subsection, the extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector shall be evaluated in competitive, negotiated acquisitions expected to exceed \$500,000 (\$1,000,000 for construction).

(b) The extent of participation of SDB concerns in performance of the contract in the authorized NAICS Industry Subsector (see paragraph (a) of this subsection) shall not be evaluated in—

(1) Small business set-asides (see Subpart 19.5), HUBZone set-asides (see Subpart 19.13), and service-disabled veteran-owned small business set-asides (see Subpart 19.14);

(2) 8(a) acquisitions (see Subpart 19.8);

(3) Negotiated acquisitions where the lowest price technically acceptable source selection process is used (see 15.101-2); or

(4) Contract actions that will be performed entirely outside of the United States and its outlying areas.

[63 FR 36123, July 1, 1998, as amended at 63 FR 70272, Dec. 18, 1998; 65 FR 46057, July 26, 2000; 68 FR 28082, May 22, 2003; 69 FR 25278, May 5, 2004]

##### 19.1202-3 Considerations in developing an evaluation factor or subfactor.

In developing an SDB participation evaluation factor or subfactor for the solicitation, agencies may consider—

(a) The extent to which SDB concerns are specifically identified;

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(b) The extent of commitment to use SDB concerns (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(c) The complexity and variety of the work SDB concerns are to perform;

(d) The realism of the proposal;

(e) Past performance of offerors in complying with subcontracting plan goals for SDB concerns and monetary targets for SDB participation; and

(f) The extent of participation of SDB concerns in terms of the value of the total acquisition.

[63 FR 36123, July 1, 1998, as amended at 64 FR 36224, July 2, 1999]

#### 19.1202-4 Procedures.

(a) The solicitation shall describe the SDB participation evaluation factor or subfactor. The solicitation shall require offerors to provide, with their offers, targets, expressed as dollars and percentages of total contract value, in each of the applicable, authorized NAICS Industry Subsector, and a total target for SDB participation by the contractor, including joint venture partners, and team members, and a total target for SDB participation by subcontractors. The solicitation shall require an SDB offeror that waives the SDB price evaluation adjustment in the clause at 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, to provide with its offer a target for the work that it intends to perform as the prime contractor. The solicitation shall state that any targets will be incorporated into and become part of any resulting contract. Contractors with SDB participation targets shall be required to report SDB participation.

(b) When an evaluation includes an SDB participation evaluation factor or subfactor that considers the extent to which SDB concerns are specifically identified, the SDB concerns considered in the evaluation shall be listed in the contract, and the contractor shall be required to notify the contracting officer of any substitutions of firms that are not SDB concerns.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

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#### 19.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer may encourage increased subcontracting opportunities in the NAICS Industry Subsector as determined by the Department of Commerce for SDB concerns in negotiated acquisitions by providing monetary incentives (see the clause at 52.219-26, Small Disadvantaged Business Participation Program Incentive Subcontracting, and 19.1204(c)). Monetary incentives shall be based on actual achievement as compared to proposed monetary targets for SDB subcontracting. The incentive subcontracting program is separate and distinct from the establishment, monitoring, and enforcement of SDB subcontracting goals in a subcontracting plan.

[63 FR 36123, July 1, 1998, as amended at 65 FR 46057, July 26, 2000]

#### 19.1204 Solicitation provisions and contract clauses.

(a) The contracting officer may insert a provision substantially the same as the provision at 52.219-24, Small Disadvantaged Business Participation Program Targets, in solicitations that consider the extent of participation of SDB concerns in performance of the contract. The contracting officer may vary the terms of this provision consistent with the policies in 19.1202-4.

(b) The contracting officer shall insert the clause at 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, in solicitations and contracts that consider the extent of participation of SDB concerns in performance of the contract.

(c) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts containing the clause at 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, a clause substantially the same as the clause at 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, when authorized (see 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting